

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Charles & Ray Mann

**Date application filed with the Town Clerk:** August 4, 2008

**Nature of request:** A Special Permit for: (1) approval of three flag lots; (2) supplemental apartments for five single family residences; (3) a waiver for a shared driveway greater than 400 feet; (4) a waiver for access to more than 4 lots; and (5) modification of the phased growth schedule.

**Address:** Owen Drive (Map 5D, Parcel 315, 314, 313, 304 & 303, R-N and R-LD Zoning Districts)

**Legal notice:** Published on August 27 and September 3, 2008 in the Daily Hampshire Gazette and sent to abutters on July 29, 2008.

**Board members:** Thomas Simpson, Jane Ashby and Albert Woodhull

**Submissions:** The petitioner submitted the following with the application:

- A site plan packet prepared by SVE Associates including existing conditions, utility plan, and grading plan, dated 7/1/08;
- A set of floor plans and elevations prepared by RK Studio Architecture for the proposed residences, with supplemental apartments, dated 7/2/08;
- A Management Plan;
- A written project summary;
- A Declaration of Access and Utility Easement and Maintenance Agreement;
- A proposed Phased Growth Schedule request;
- A Hydrology Report prepared by SVE Associates dated 7/1/08;
- A letter from New England Environmental, Inc., dated June 4, 2008.

The Planning Department submitted a memo dated August 21, 2008 concerning zoning regulations and waiver requests.

For the continued hearing on September 15, 2008, the following was submitted:

- Special Permit ZBA FY75-74 denying the petitioner, W. D. Cows, the right to remove gravel and replace it with fill on the site currently under consideration;
- A memorandum from the Planning Department, dated 9/11/08, outlying the flexibility built into the Zoning Bylaw for driveway lengths, and citing examples of several Special Permit approving driveways longer than 400 feet;
- An enlarged ANR map of lot #4 showing the frontage as part of R-N and R-LD districts, but located primarily in the R-N zoning district, drawn by Huntley Associates, dated 2/25/08;
- A legal opinion from the Town Attorney, dated 9/15/08, stating that lot #4 can be classified in the R-N district and giving reasons for same;

- An email from the Planning Director, dated 9/15/08, adding to the legal opinion as to why the lot frontage in question can be categorized as within the R-N district;
- A letter from Attorney Patrick Melnik on behalf of abutter Eugene Borowski, who objects to the proposal until a comprehensive grading plan and reconfigured site plan after excavation and grading, dated 9/9/08;
- An email submitted from ZBA member Al Woodhull, dated 8/30/08, outlining some of his concerns about driveway length and lack of sidewalk, distributed at the hearing;
- Updated site, utility and grading plans showing a sidewalk located next to the proposed driveway and the grading along the driveway near the northern property line, drawn by SVE Engineering, dated 9/4/08.

**Site Visit:** August 27, 2008

The Board met with applicant Ray Mann and Anthony Wonseski, Senior Project Manager for SVE Associates at the site. They observed the following:

- A 5+ acre former sand and gravel excavation area located between Pine Street and Owen Drive;
- The existing dirt access road and existing drainage outflow pipe from East Pleasant Street;
- An existing drainage basin area near the dirt access way, approximately 30 feet deep;
- The approximate location of the three proposed flag lots and two frontage lots;
- Significant areas of deposited fill in the center of the property;
- The proposed grading, cut and fill to occur on site;
- The general area of fill required for the proposed residences;
- The drainage basin at the western property line;
- The steep slope up to the lot frontages along Owen Drive.

**Public Hearing:** August 28, 2008

The petitioner, Ray Mann, spoke to the application at the hearing. She made the following statements:

- She is the architect for the project and the potential owner of the property; she is not a developer and has lived in Amherst for 16 years;
- The concept of the project is to provide high performance, solar courtyard homes that reflect the Amherst lifestyle with the use of indoor/outdoor space;
- Each of the homes will include a 600 sq. ft. handicap accessible supplemental apartment for immediate or extended families or for income as rental units;
- The 5.98 acre property was formerly used as a sand and gravel quarry and is highly permeable;
- The site contains two Town storm water easements from Lawrence Circle and East Pleasant Street;
- The site is ideal for solar gain, with trees surrounding the property and a sun bowl in the center;
- The proposal is primarily for 3 flag lots plus waivers for the driveway length and for the number of lots accessed by the driveway;
- The total number of parcels is five, with two frontage lots on each end of the driveway and three flag lots in the middle;
- A waiver is requested for a landscape plan and erosion control plan at this time; they would like receive approval of the project first, then prepare the detailed plans;
- The common access way would be 18 feet wide, as recommended by Amherst Fire Department, and would require widening the existing entrance area;
- A fire hydrant will be located near the driveway, halfway into the site;
- The utilities (water, sewer) will be provided under the common access way and have been reviewed by the Town Engineer, Jason Skeels;
- The Town easements for storm drains onto the property are recorded with the Registry;
- The Cows family currently owns the site;

- The lighting will be low level throughout, including at the mail boxes on East Pleasant Street and at the turnarounds along the long driveway;
- Some white pine and scrub trees in the perimeter will not survive the construction, but every effort will be made to preserve the older oaks and larger pines.
- A homeowner association will maintain the common driveway and all associated utilities, including water lines, the low pressure forced sewer system and lines, and drainage easement areas.

The applicant had prepared five charts of perspective drawings, photo simulations and cross sections showing the entire site relative to surrounding properties and streets. In addition, models of the proposed homes on the five lots were shown on a 3-foot square simulated site. The display was reviewed by the applicant with the Board, which enabled the Board to visualize the entire project.

Mr. Simpson asked the applicant why the access to the parcels was not provided from Owen Drive. Mr. Woneski, engineer for the project, stated that the proposed design reduces disturbance to existing slopes, which are “fierce” off Owen Drive. The design also maintains the open spaces on the property and eliminates the need for numerous driveways from Owen Drive.

Mr. Simpson asked the applicant if consideration had been given to making the common driveway a public road. Mr. Woneski responded that the proposal is only for five dwellings and the more stringent criteria for public streets would eliminate the feasibility of the project. He noted that they had met with the Assistant Fire Chief Mike Zlogar, who was satisfied that the proposed design includes adequate width and turnarounds for emergency vehicles.

Mr. Simpson asked the applicant about the division of the lots via “Approval Not Required” (ANR) process with the Planning Board for creating the lots. He requested clarification regarding the frontage for lot #4 that is located in two zoning districts, R-N and R-LD. Mr. Simpson noted specifically that lot #4 appeared to contain frontage in the R-LD zone, but the flag lot appeared to meet the dimensional requirements of the building circle for the R-N Zoning District under Section 6.35 of the Zoning Bylaw.

Mr. Woneski stated that the applicant had met with the Planning Department and the parcel was considered to contain most of the frontage in the R-N Zoning District. Therefore, the building circle and lot size was designed using the R-N dimensions.

Building Commissioner Weeks said that, in her opinion also, the parcel met the requirements of the R-N Zoning District. The Board reviewed the ANR site plan and discussed the lot frontage issue and determined that additional research was required in order to make a final determination. The Board requested legal clarification from the Town Counsel regarding the dimensional requirements and frontage of lot 4.

Ms. Ashby asked for additional information regarding the arrangement of the single family dwellings relative to solar design. Ms. Mann said that the homes are designed as solar courtyard homes which allow ventilation in the summer and retention of heat in the winter. Ms. Mann added that the arrangement of the homes is such to provide for optimal solar gain and have been positioned differently on some lots in order to provide terraced gardens. The design also incorporates efficient insulation and ventilation for each unit.

Ms. Ashby asked the applicant to describe the layout and design of the supplemental apartments. Ms. Mann said that the supplemental apartments have been designed to be wheelchair accessible and are located on the ground floor. The apartments have been designed with a living area of 600 sq. ft. and include shared courtyards, garage and storage areas with the main house.

Ms. Ashby noted that inclusion of five supplemental apartments in each home changes the character of the proposal, expanding it beyond the typical five single family home project. There could be as many as 30-35 people in the five units. That could result in a high vehicle and pedestrian traffic using the common driveway for access to East Pleasant Street. Ms. Mann responded that the common drive is 18 feet wide and could allow for two way traffic and pedestrian travel. Mr. Wonseski showed the Board the cross section of the proposed common driveway and noted that, at 18 feet wide, it is wider than a 10-12 foot private driveway. It also contains a graded parkway of 1 foot on each side which would be available for pedestrian use.

Mr. Simpson observed that because the supplemental apartments were designed to be wheelchair accessible, any elderly tenants or those in wheelchairs would be required to use the common driveway to access East Pleasant Street. The Board noted the absence of walking paths or sidewalks on the site plan.

Ms. Mann said that they are looking at a grass-paver driveway, with 8" of gravel under the grass, and may use it for a walking path through the area. In any case, snow removal will be off the driveway and 1-foot graded area in various places to increase safety for walking

Mr. Woodhull expressed concern with safety related to using the common driveway for pedestrian access and stated that he would like to see a sidewalk along the common driveway. Mr. Woodhull also expressed concern related to the environmental impact to wildlife and potential wetland areas. He said that the applicant is taking a wildlife habitat and turning it into suburbia.

Mr. Woodhull said that he is concerned with the drainage areas – they could be vernal ponds. Even in permeable soil, there will be ponds in March/April while the ground is still frozen.

Ms. Mann said that Bruce Griffen, an environmental expert, was asked about endangered species inhabiting the area, especially in the short time when the drainage areas are wet. He was satisfied that no endangered species are on the property. The applicant added that she is much attuned to environmental concerns, and feels that paying a lot of attention to the environment with this proposal could improve the habitat. For example they will be filtering out the oil from the road drainage that goes in the drainage swales.

Mr. Woodhull questioned the applicant regarding the recently deposited fill on the property and whether it was permitted. Ms. Mann indicated that she is not the owner of the property yet, but believed the fill was illegally dumped there.

Cinda Jones, of Cowls Lumber, identified herself as one of the owners of the property. Ms. Jones indicated that recent fill has been deposited from the Lawrence Circle development directly to the west and the Roth contracts dredging the stream on Meadow Street. But, as soon as she learned of the fill being placed on the property without their knowledge, Cowls erected a yellow "fence" across the entrance to the property.

Mr. Woodhull noted that 15-20 dump trucks of fill looked to have been deposited very recently, given the fresh tire tracks at the site. Ms. Jones said that she did not know about that.

Mr. Simpson asked the applicant about the amount of fill needed for the project. Mr. Wonseski said that with the exception of the recently deposited fill, all grading and fill would be created from the site.

Mr. Simpson noted that there are significant slopes adjacent to the northerly property line and asked the applicant whether any erosion control measures were planned. Mr. Wonseski responded that they are required to stabilize the existing slope during grading and construction, including a bounded fiber matrix against the slope. To maintain the slope, vegetation such as low shrubs will be planted after construction of

the roadway. They will meet or exceed standards of the NPDES – Storm water pollution prevention plan.

Ms. Ashby also expressed concern related to the potential for erosion occurring during site excavation and grading, and asked the applicant how erosion would be prevented. Ms. Ashby also asked the applicant about the stability of the house construction given the unknown deposits of material on site, such as stumps. Mr. Wonseski said that site grading and construction would be done to State standards; various “best management practices” would be used, including silt fencing, plastic webbing and other preventative measures. He noted that they are required to prepare detailed erosion control plans prior to construction. However, they would like to receive Special Permit approval prior to incurring the expense of preparing such plans. The applicant added that the homes would be constructed on a structural slab system from the Massachusetts Building Codes, which are designed to counteract unstable soil conditions. Runoff would drain into the swale in the middle of the site.

Mr. Woodhull asked the applicant to describe the capacity of the proposed drainage basin in the middle of the site. Mr. Wonseski said that the drainage basin was designed for the 100 year storm. Approximately 20 acres surrounding the site, from Pine Street, East Pleasant Street and Owen Drive, currently drain into this area. The calculations show that the basin would gather approximately 3 feet of water, at approximately 6 feet below the proposed house elevations. There will be no emergency overflow. He added that the existing storm drain outflow pipe from East Pleasant Street will be extended into the middle basin at the cost of the applicant.

Mr. Simpson opened the hearing for public comment.

Eugene Borowski identified himself as the owner of 325 Pine St. and an vacant flag lot immediately to the north of the subject property. He reviewed a history of the property related to the former sand excavation activities and expressed concern related to grading in proximity to his property at the northerly property boundary. Mr. Borowski posed several questions to the applicant, including whether test pits were conducted, location of the sewer line, how close grading will be to the northerly property line, the amount of rain water runoff the basin can hold, the material to be used for the shared driveway, and if fire truck access would be adequate.

Mr. Wonseski responded to Mr. Borowski’s questions with the following information:

- Test pits, or percolation tests, were conducted and showed highly permeable soils;
- The sewer line will be installed under the access road;
- Grading will occur close to the northerly property line in accordance with Massachusetts erosion control standards;
- The angle of repose for erosion control will be 2:1, better than the mandated minimum of 1.7:1;
- The basin has been designed for a 100 year storm;
- The driveway material has not been determined but would be either asphalt perhaps a permeable surface such as grass-pave;
- The proposed driveway is at least 30 feet from the northern property boundary;
- Assistant Fire Chief Mike Zlogar has reviewed the proposal and his recommendations have been incorporated into the plans, including adding a fire hydrant.

Mr. Borowski noted his concern related to the steep slopes of the existing drainage basins and the dangers posed by frozen standing water and children falling into the basins.

David Leith, 39 Owen Drive, stated that he and his neighbors (who were not identified) were generally

supportive of the project and that it was preferred to a “by-right” development. He said that the driveway coming from East Pleasant Street was much preferable to curb cuts along Owen Drive, which he said would be a “disaster.” He added that keeping the trees along Owen Drive provided a nice buffer between the Owen Drive current homes and the proposed new ones.

Mr. Leith said that he lives at the lowest point on Owen Drive, and this summer did see the catch basins overflow temporarily with the heavy rains. However, his property had no drainage problems because of the permeable soil. He said the soil for the site under consideration is like “playground sand” in consistency and softness.

Mr. Leith said that in terms of animal life, three years ago there was a lot of wildlife in the area, but with the development of Owen Drive and Lawrence Circle, there is not much left.

Mr. Leith said that he has witnessed materials deposited on the site, including large stumps and debris from the creation of Lawrence Circle. He said that constructing foundations may be a concern because of what may be buried there.

Cinda Jones stated that when Lawrence Circle was being constructed, the Town Engineer, Jason Skeels, said that the owners could deposit fill on the site. Stumps and tops have been put on the site to rot, then subsequently have been removed. She added that there is nothing virgin on the site, that it has been bulldozed for many years.

Michael Childs, 45 Oak Knoll, identified himself as a “character witness” to the applicant Ray Mann. Regarding the safety of children, he stated that the applicant has children and she plans to live on the site. Issues of safety will be most important to her. He said that there are some nasty slopes on the land right now, but the development will improve them.

Mr. Childs noted the value of maintaining a Home Owners Association for the management of a development such as this. He lives in Echo Hill and belongs to a 50-family association. He supports the concept of a small community such as this proposal.

The Board agreed that it would be good to have a path along the low area of the common land for the children, and that a pull-off along East Pleasant Street for school buses may be desirable.

Mr. Simpson asked the applicant if it was her intention to build all the proposed dwellings or sell the property and have the new owners build the residences. Ms. Mann responded that she would like to build the homes; however, this may not be economically feasible. Mr. Simpson noted and the applicant confirmed that there would be no guarantee that the homes would be built as shown in the design or be environmentally retrofitted. The applicant added that she hoped the concept of the design would draw in people who are interested in constructing similar environmental friendly homes.

Mr. Woodhull expressed concern related to approving a common driveway greater than twice the length generally allowed in the Zoning Bylaw. Building Commissioner Weeks noted that the Bylaw gives the Board leeway to permit common driveways longer than 400 feet with conditions, and they can be permitted on the basis for providing safety to residents. She noted a development similar to this along Henry Street that has a very long common driveway. Flexibility is built into the Zoning Bylaw, she said, when access for emergency vehicles is met to the satisfaction of the Fire Department.

Mr. Woodhull also expressed concern related to the notification of abutters related to indication from a new

neighbor that they were not informed of the public hearing. The zoning assistant stated that the abutters' addresses are updated only once per year, so that the new neighbors would not have gotten a notice.

Building Commissioner Weeks warned the applicant that supplemental apartment permits will expire within 2 years of issuance if they are not built. Expiration of the permit would require renewal before the ZBA.

The applicant requested the Board close the hearing and require pedestrian access as a condition. Mr. Simpson replied that it's better in this case that the applicant submits plans showing pedestrian access during the hearing rather than after the fact. There should be a sidewalk or walkway that would address the needs of those with disabilities, since the proposed supplemental apartments are handicapped accessible.

Because of the ambiguity concerning the zoning district of the frontage for lot #4, The Board requested a legal interpretation from Town Counsel regarding the building area calculation and zoning district for lot #4.

Mr. Simpson moved to continue the public hearing to a date certain of Monday September 15, 2008 at 7:30 p.m. Ms. Ashby seconded the motion. The Board voted unanimously to continue the public hearing to September 15, 2008, at 7:30 p.m..

**Public Hearing (continued):** September 15, 2008

Mr. Simpson listed for the record the documents submitted since the previous hearing:

1. New plans showing a sidewalk along the proposed shared driveway;
2. A legal opinion from the Town Attorney's office concerning the frontage and zoning district for lot #4 on the plans;
3. An email message from the Director of the Planning Department with additional information resulting from a conversation with the Town Attorney;

Mr. Simpson summarized the legal opinion and the additional information from the Planning Director for the applicant and public. Essentially, when zoning districts change in a neighborhood, the district lines are drawn down the center of an existing street or at a lot boundary if possible, so that the different zoning districts are clearly delineated. In this case, the lines for the two zoning districts on the applicant's property, R-LD and R-N, were drawn before the development of Owen Drive. Subsequently, the zoning line did not match up cleanly when Owen Drive was developed. As a result, the frontage at the street (Owen Drive) for lot #4 is partly in R-LD and partly in R-N zones. Specifically, lot #4 has street frontage of 54 feet, 41.48 feet in the R-N zone and 13.62 feet in the R-LD zone. The other two flag lots for this proposal do not have split zoning for the street frontage, and their zoning status was not in question.

The opinion of the Town Attorney was that, since lot #4 has sufficient frontage for the R-N zone, and all be a very small part of the lot that is along Owen Drive is within the R-N zone, the lot should be classified as part of the R-N zoning district. Thus the Zoning Bylaw requirements of Section 6.35 for a flag lot, particularly building circle dimensions in the R-N zone are met for lot #4 with this proposal.

Ray Mann and engineer Anthony Wonseski spoke to the remaining issues of application. They gave the following information:

- The revised site plan shows a sidewalk or "walking path" along the full length of the shared driveway;
- The walkway will be 4 feet wide and will be paved with a different material to distinguish it from the driveway;
- The full width of the driveway plus sidewalk will be 16 feet plus 4 feet, with 1 and 2 feet of shoulder on either side of the gravel and/or pavement;

- ADA requirements are for a 3-foot wide sidewalk; they want a 4-foot wide walkway for bicycles too;
- The entire width of the graded utility easement which will contain the driveway and sidewalk will be 30 feet;
- They checked the plan with Mike Zlogar, Assistant Fire-Chief, who approved it;
- There will be no grass strip between the driveway and walkway as suggested by Mr. Woodhull because of the difficulty of maintaining such a design;
- The paving might be asphalt for the walkway and gravel-pave for the driveway;
- They researched other long driveways permitted in Amherst and found that most did not have sidewalks;
- The bus route is quite convenient on East Pleasant Street to the site under consideration.

Mr. Woodhull distributed an email that he sent to the zoning assistant prior to the hearing, dated August 30, 2008. He said that he was pleased with the proposed walkway, but wondered if it should not be physically separated from the shared driveway. He said that painted bicycle lanes are not always safe. He suggested perhaps a bump separating the driveway from the sidewalk might provide more safety for children and elders. He said that the Board is not bound by precedent. The distance from the last house proposed for the site to the bus stop is about 1/5 mile.

Ms. Mann responded that they had looked at the possibility of separating the sidewalk from the shared driveway with a grass strip, and rejected it for several reasons:

- Nothing would grow in such a strip and would be unsightly.
- They would like to preserve as much of the natural environment of the site as much as possible, and they don't want too wide of an access that would cut into the slope at the northern edge of the site.
- What is proposed is a private driveway. If the driveway and walkway are separated, the access strip would look more like a road than a driveway.
- There are just five lots. If they all came off Owen Drive where the lot frontages are, it would destroy Owen Drive.
- The proposal with a common driveway agreement will result in five residents sharing the responsibility of plowing the driveway and sidewalk. If the sidewalk were separated, a separate machine would be needed to clear the sidewalk.
- In order to be wheelchair accessible, a sidewalk must be stable. To have a walkway wandering through the property would not be safe for those with disabilities.
- There are legal issues involved with a 30-foot wide utility easement where the driveway would be located, and legally it would be more safe to have the sidewalk within the easement;
- The easement will be a defined area that will be maintained by an outside contractor;
- If the easement were a public right-of-way, one could be more creative in the design of the road and sidewalk;
- The proposed houses will be smaller than those on Owen Drive, but the budget will be quite tight to build. The fire hydrant will be about \$8,000 extra; the two turnarounds for emergency vehicles will add, as well as the extra pavement for the sidewalk, for example, will all add to the cost to build.

Ms. Ashby noted that if there is a barrier between the common driveway and a sidewalk, the sidewalk will not be open all the time in bad weather. She wants a sidewalk that will be plowed and open year-round. Also, if the surfaces are distinct, as the applicant mentioned earlier, then an automobile driver should be able to tell if he has wandered into the sidewalk space. If one is asphalt-like and the other gravel, they will look and feel different to a driver.

Mr. Simpson added that motorists will most likely be driving at 10-15 miles an hour, so visibility should be



adequate with the driveway and sidewalk together. What's more important is to preserve the slope on the northern boundary of the property, he said.

In response to Mr. Woodhull's concern about the driveway length, Ms. Mann discussed the Zoning Bylaw reasons for limiting the length of a common driveway, and the Bylaw conditions under which a waiver can be made for limiting the length. If all safety aspects are met, such as an extra fire hydrant on the site, and places for emergency vehicles to turn around, then a waiver can be issued. Mr. Woodhull acknowledged the reasons for a waiver, and noted the memo prepared by the Planning Department giving examples of driveways longer than 400 feet.

Ms. Mann discussed the reasons for the placement of the common driveway. She said that the south part of the site has the storm drain easement. It will be protected from the driveway if separated. In fact, situating the driveways from Owen Drive would be much too difficult and would negatively impact the land. Fewer trees will need to be removed; she hopes to plant some blight-resistant American chestnuts. Also, the proposed five houses will make much more of a neighborhood if grouped together with a common driveway along the northern border of the site.

Mr. Borowski, 5 Lincoln Street, Northampton, spoke to the application again, and repeated most of what he said at the earlier hearing. He said again that removing trees along the northern boundary and excavating will loosen the tree roots on the trees on his property and will cause the sandy soil to slide. He also asked how much topsoil will have to be brought in to landscape the lots.

The applicant said that they have no calculation yet of how much topsoil will be needed. They will be bringing in 4-6 inches of loam.

Mr. Wonseski responded to Mr. Borowski's questions. He said that a 40-foot wide buffer will be left along Owen Drive, and the ratio will be 2:1 for soil excavation. Overall, the site lends itself to the design that has been proposed.

Ms. Mann asked Mr. Borowski what his objection was to the proposed project. Mr. Borowski said that 50 years ago the ZBA had said that no more excavation could take place there and no more sand/gravel removed. He wants that decision to continue.

Ms. Mann said that they did a title search on the parcel, and found no restrictions on the land. Mr. Simpson said that the Zoning Bylaw allows an owner to move soil within a site without a Special Permit as long as there are no wetlands, which there are not in this case.

Ms. Ashby asked about a landscaping plan. Do the plans indicate what will be new and what will be removed? The applicant said that the existing trees on the perimeter of the site will remain. In the flat area, the white pines will be removed. Any signage will be away from East Pleasant Street.

Mr. Woodhull asked again about the house design for solar energy. The applicant said that the design will allow the morning light to come in, which can help to heat the house or it can be let go. A sun-space house is different than a box, she said. The courtyards will have southern exposure.

Mr. Woodhull noted that the applicant is not building the houses other than her own. Ms. Mann responded that she want to set the standard by offering the design to future buyers.

Ms. Ashby stated that, since only the applicant's house will be actually built at this time according to the

design submitted, she was unwilling to grant more than one supplemental apartment at this time. If and when future builders wish to have a supplemental apartment, they can apply for a Special Permit for the extra unit at that time. The other Board members agreed with Ms. Ashby's analysis of the situation.

With no further questions from the Board or the public, Ms. Ashby made a motion to close the hearing. Mr. Woodhull seconded the motion, and the vote was unanimous to close the hearing.

**Public Meeting:**

Mr. Simpson asked if any member of the Board was philosophically opposed to the requests of the applicant. Mr. Woodhull said that he was still unhappy with the driveway length, but will not oppose the proposal.

Mr. Simpson said that, in his opinion, the shared driveway, though long, is a good compromise between maintenance and functionality. The two distinct surfaces for the walkway and driveway offer a good compromise. It will not be a public street, but a driveway where kids can ride their bikes or play and be safe. The homeowner's association will maintain the driveway/sidewalk and drive responsibly on it.

Ms. Ashby agreed, and said that she supports the common driveway with an attached sidewalk.

The Board listed 9 categories that they would discuss and condition if approved – the accessory apartments, the waivers, the common access, exterior lighting, fill, driveway construction, location of the proposed houses, protection of the bank on the north side of the property, and the number of cars per house.

The Board members each awarded building points to the proposal according to the Phased Growth section of the Zoning Bylaw. The application received the highest number of points possible, thus allowing the petitioner to develop the site according to her own time schedule.

After making findings and voting, the Board spent the rest of the public meeting crafting conditions of the Special Permit

**Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because the area is comprised of single or two-family residences. The houses will be smaller than those on Owen Drive, but of the size of those on Pine and East Pleasant Streets.

10.382, 10.383 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the perimeter of the site will remain screened by trees and shrubbery,

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because a fire hydrant and turnarounds will be provided for emergency vehicles. The excavation and landscaping will be such that the steep slopes from former quarrying will be lessened.

10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the town because each lot will be conditioned to have adequate parking; signage for the addresses will be discreet, removed from the entranceway along East Pleasant Street.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because exterior lighting will be downcast, as conditioned by this permit.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. It is a creative design which will maximize solar gain and provide a sense of community with the placement of the

houses and the shared driveway.

**Public Meeting – Decisions**

Mr. Simpson made a motion to waive Section 7.711 of the Zoning Bylaw to allow access to more than four residences via the shared driveway, thus allowing all five proposed houses to use the shared driveway. Ms. Ashby seconded the motion, and the vote was unanimous to allow five homes to use the shared driveway.

Mr. Simpson made a motion to waive Section 7.713 to allow the shared driveway to be 800 feet, longer than 400 feet allowed under the Bylaw. Mr. Woodhull seconded the motion, and the vote was unanimous to allow the driveway to be 800 feet long.

Mr. Simpson made a motion to APPROVE the proposal for three flag lots, a shared 800-foot long driveway for five lots, one supplemental apartment, and to waive the restrictions of the Phased Growth Bylaw, with conditions. Ms. Ashby seconded the motion, and the VOTE was unanimous to grant a Special Permit to Ray and Charles Mann for three flag lots, a shared 800-foot long driveway for five lots, one supplemental apartment, and to waive the restrictions of the Phased Growth Bylaw, on the premises at Owen Drive (Map 5D, Parcel 315, 314, 313, 304 & 303, R-N and R-LD Zoning Districts), with conditions.

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THOMAS SIMPSON

\_\_\_\_\_  
JANE ASHBY

\_\_\_\_\_  
ALBERT WOODHULL

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2008 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2008.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2008  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2008,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Ray and Charles Mann for three flag lots, a shared 800-foot long driveway for five lots, one supplemental apartment, and to waive the restrictions of the Phased Growth Bylaw, on the premises at Owen Drive (Map 5D, Parcel 315, 314, 313, 304 & 303, R-N and R-LD Zoning Districts), subject to the following conditions:

1. The site, consisting of two frontage and three flag lots, a shared driveway and landscaping shall be built according to the plans submitted to the Board at a public meeting on September 17, 2008.
2. The location of all residential buildings on the flag lots shall be approved by the Board at a public meeting prior to issuance of a building permit.
3. All residences shall be single family, owner-occupied, with one supplemental apartment allowed for the applicant's own residence at lot #5.
4. The accessory apartment shall be built according to the plans submitted and shall be no more than 800 square feet in area, or 900 square feet if fully handicapped accessible.
5. The accessory apartment shall have no more than three occupants.
6. There shall be parking for four (4) vehicles for lot #5 as shown on the submitted plans.
7. The shared driveway shall meet all the conditions of Section 7.712 of the Zoning Bylaw. Specifically, from north to south, there shall be a two foot wide shoulder, a 16 foot wide shared driveway, a 4 foot wide sidewalk, and a one foot shoulder, creating a 21 foot wide prepared area for drivers and pedestrians.
8. The four foot wide pedestrian walkway shall have a surface visually distinct from the shared driveway and shall meet ADA requirements.
9. No sodium chloride (salt) shall be used on the shared or on individual driveways. Environmentally sensitive alternative de-icing materials shall be used instead, as listed in Section 3.254 of the Bylaw.
10. Street signs, low level and downcast exterior lighting, and the amount of topsoil needed for grading shall be approved at a public meeting.
11. Topsoil applied to the disturbed areas shall be applied in accordance with Section 5.10 of the Zoning Bylaw.
12. The common access agreement shall be submitted to the Board for approval at a public meeting before filing at the Registry of Deeds.
13. Easements for the storm water drainage areas shall be submitted to the Board for the files after filing at the Registry of Deeds.
14. Two turnarounds for emergency vehicles shall be installed, as shown on the site plan submitted to the Board on September 15, 2008.
15. An erosion control plan for the bank on the north side of the site shall be submitted to the Board for approval at a public meeting.
16. The finished grade on the northerly bank shall be no steeper than 2:1.
17. An 8-foot wide undisturbed buffer shall be preserved along the northern boundary, and all trees shall remain within that buffer.
18. New as-built site plans shall be submitted to the Board for approval at a public meeting showing the finished areas after building the roadway and sidewalk.

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THOMAS SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE